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PHONE #FROM: José J. Aparicio, Esq. Telephone #: 412 562-1421

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Letter to Kathleen M. Kerr
Petition for Right of Priority Under 35 U.S.C. §119(e), 35 U.S.C. §120,
and 37 C.F.R. 1.78(a)(2)
Supplemental Application Data Sheet

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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José J. Aparicio
412 562 1421
apariciojj@bipc.com

*Admitted in IL, not admitted in PA

One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410
T 412 562 8800
F 412 562 1041
www.buchananingersoll.com

April 11, 2005

VIA FACSIMILE

Kathleen M. Kerr
Primary Examiner, Group Art Unit 1652
United States Patent and Trademark Office
FAX (703) 872-9306

Re: United States Patent Application Serial No. 10/067,974
Title "Polynucleotide Constructs Encoding Aspartate Kinase, Aspartate-
Seminaldehyde Dehydrogenase, And Dihydrodipicolinate Reductase And Related
Constructs, Products, And Methods"
Inventors: Lhing-Yew Li and Kelli Jean Trei

Dear Examiner Kerr:

Please find enclosed copies of documents filed on April 7, 2005 pursuant to 37 C.F.R.1.178(a)(2) in the above referenced case to make a claim of priority to U.S. Serial No. 09/722,441, now allowed.

These are courtesy copies for your reference and are not intended to replace the formal documents filed with the U.S. Patent office.

Very truly yours,



José J. Aparicio

JJA/

Enclosure

cc: Craig G. Cochenour, Esq.



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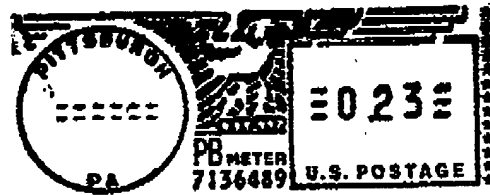
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Serial No.: 10/067,974 Filing Date: 2/8/2002 BIPC File No.: 030738
Title: Polynucleotide Constructs Encoding Aspartate Kinase...
Applicants: Lhing-Yew Li, et al. Date: 4/7/2005
The PTO has received:
☐ Patent Application of _____
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☐ Drawings _____ Sheet(s)/Figs. _____ to _____
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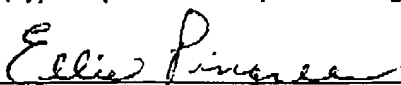
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IN RE APPLICATION OF: Lhing-Yew Li, et al.		
Serial No.: 10/067,974		Filing Date: February 8, 2002
Title: Polynucleotide Constructs Encoding Aspartate Kinase, Aspartate-Semialdehyde Dehydrogenase, and Dihydrodipicolinate Reductase and Related Constructs, Products, and Methods		
Group Art Unit 1652		Examiner Kathleen M. Kerr

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In re Application of: : **PATENT APPLICATION**
:
:
Lhing-Yew Li, et al. : POLYNUCLEOTIDE CONSTRUCTS
: ENCODING ASPARTATE KINASE,
: ASPARTATE-SEMIALDEHYDE
: DEHYDROGENASE, AND
: DIHYDRODIPICOLINATE REDUCTASE
: AND RELATED CONSTRUCTS, PRODUCTS,
: AND METHODS
:
Serial No.: 10/067,974 : Group Art Unit: 1652
:
Filed: February 8, 2002 : Examiner: Kerr, Kathleen M.
:
Pittsburgh, Pennsylvania 15219
April 7, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION FOR RIGHT OF PRIORITY UNDER 35 U.S.C. §119(e),
35 U.S.C. §120, and 37 C.F.R. 1.78(a)(2)**

Sir:

This is a petition to request the benefit of priority of an earlier filed application in connection with the above-captioned Application. This petition is filed under 37 C.F.R. 1.78(a)(3). The reference identifying the claim to the prior filed applications by serial numbers and filing dates and the date that the present case was filed was unintentionally delayed. A statement of unintentional delay in filing the priority claim and an authorization to charge to Deposit Account No. 02-4553 the required surcharge as set forth under 37 C.F.R. 1.17(t) are included herewith.

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Atty. Ref. No. 030738

Remarks begin on page 3 of this paper.

Conclusion begins on page 5 of this paper.

Authorization begins on page 6 of this paper.

Appendix A, Supplemental Application Data Sheet begins on page 7 of this paper

Atty. Ref. No. 030738

REMARKS

Applicants respectfully make a request for the benefit of priority to an earlier filed co-pending case under 35 U.S.C. §119(e) and §120 and as set forth in 37 C.F.R. 1.78(a)(2), claiming the benefit of priority to the co-pending case U.S. Serial No. 09/722,441 (now allowed) filed on November 28, 2000, naming Paul D. Hanke, Lhing-Yew Li-D'Elia, and Holly J. Walsh as inventors. This claim for the benefit of priority is unintentionally delayed and this petition requesting said benefit of priority is accompanied by a surcharge for unintentionally delayed benefit of priority of an earlier filed case as set forth under 37 C.F.R. 1.17(t).

The earlier filed co-pending U.S. Serial No. 09/722,441 and the present application have one common inventor Lhing-Yew Li (formerly Lhing-Yew Li-D'Elia as listed in U.S. Serial No. 09/722,441 who is one and the same individual as Lhing-Yew Li listed as inventor on the present application). Said U.S. Serial No. 09/722,441 claims the benefit of priority to U.S. Provisional Application No. 60/184,130 filed on February 22, 2000 and to U.S. Provisional Application No. 60/173,707 filed on December 30, 1999. Applicants gratefully acknowledge the notice of allowability of U.S. Serial No. 09/722,441 mailed on February 9, 2005 and note for the record that the issue fee has not yet been paid as of the filing of this paper on April 7, 2005. The issue fee is due on or before May 9, 2005. U.S. Serial No. 09/722,441 is co-pending and Applicants respectfully request the benefit of priority thereto.

The present case was filed as a Request for Continued Examination (RCE) on December 7, 2004 and the deadline to claim priority to the earlier filed U.S. Serial No. 09/722,441 was four months from the filing of the parent case of the RCE. The parent case of the present RCE case was filed February 8, 2002. Thus the period for timely filing a petition for priority to the earlier

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Atty. Ref. No. 030738

filed U.S. Serial No. 09/722,441 expired on June 8, 2002. The delay in filing this petition for benefit of priority under 37 C.F.R. 1.78(a)(2) from February 8, 2002 to the present was unintentional and Applicants respectfully request granting of the benefit of priority to the following earlier applications: U.S. Serial No. 09/722,441, filed November 28, 2000, which is a utility application claiming the benefit of priority to U.S. Provisional Patent Application Nos. 60/184,130 filed February 22, 2000, and 60/173,707 filed December 30, 1999.

Applicants enclose a Supplemental Application Data Sheet which sets forth the above-noted requested claim of the benefit of priority.

Atty. Ref. No. 030738

CONCLUSION

Applicants respectfully submit the instant petition for the benefit of an earlier filed priority to U.S. Serial No. 09/722,441. Applicants reserve the right to withdraw this petition for benefit of priority during the course of prosecution of the present application.

Atty. Ref. No. 030738

AUTHORIZATION

A check in the amount of \$1,370.00 is enclosed for the fee associated with this Petition. The Commissioner is hereby authorized to charge any additional fees associated with this paper or credit any overpayment to Deposit Account No. 02-4553. A duplicate copy of this Petition for Benefit of Priority is enclosed for deposit account purposes.

Respectfully submitted,

Buchanan Ingersoll PC



Dated: April 7, 2005

Craig G. Cochenour
Registration No. 33,666
One Oxford Centre, 20th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219
Telephone: 412-562-3978